

\* 9

---

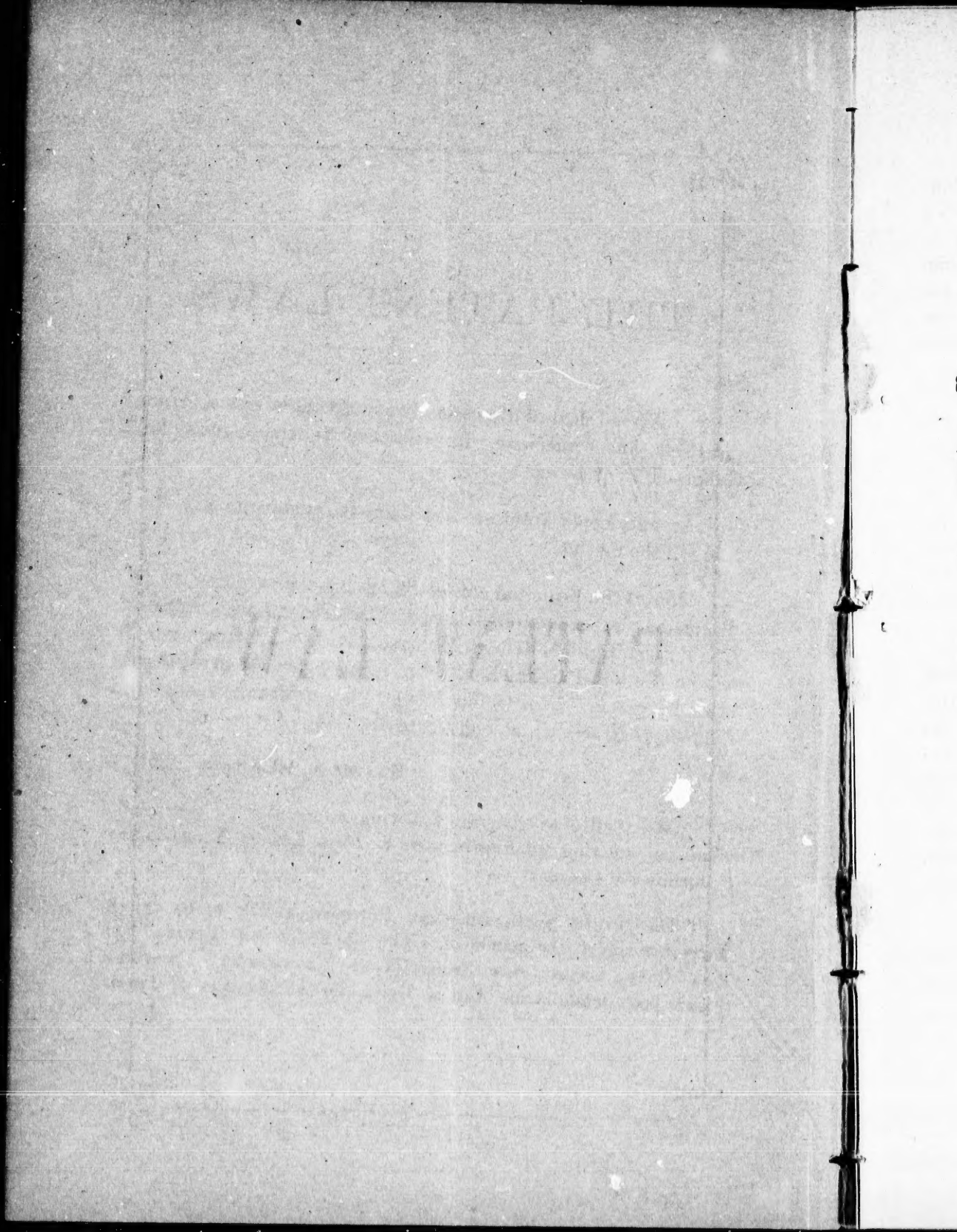
THE

---

PATENT LAWS.

---

Times Steam Power Works, 60 Sparks-st., Ottawa.



# THE PATENT LAWS.

---

SIR :

A good deal of discussion has lately taken place, through the Press, and otherwise, in reference to the contemplated General Patent Laws.

As one deeply interested, I deem it my duty to say something in the matter.

One of the principal causes which have given rise to this discussion, was a pamphlet issued in 1867, by Charles Legge & Co., Patent Right Solicitors, Montreal, entitled, "How and by whom Letters Patent should be secured for Americans and other Inventors," from which I beg to lay before the reader the following extracts which constitute the body of it :—

" MONTREAL, 1st January, 1866.

" We desire to give the following information for your guidance in securing your instructions by Royal Letters Patent in the Dominion of Canada.

" The British North American Provinces, shortly to be united together under the name of 'The Dominion of Canada,' are as follows : Canada, New Brunswick, and Nova Scotia. Provisions have been made in the Act of Union for the admission of Prince

“Edward Island, Newfoundland, Vancouver’s Island, British Columbia, &c., &c., when the various Colonies or Provinces signify a desire to join the Confederation, which they, no doubt, will soon do. The Union of the first named three Provinces will be perfected during the present year, when a general Patent Law will be passed, but whether under its stipulations Foreigners or British Subjects, non-resident in the Dominion, will have the privilege of obtaining Patents for their inventions, is uncertain.

“At the present time, Patents are granted in Ontario and Nova Scotia only to British Subjects, who must be residents in each respective Province, as well as the discoverers of the invention for which Letters Patent are sought. In New Brunswick, however, all foreigners, resident or non-resident, may obtain Letters Patent for their inventions for a period of fourteen years, renewable on certain conditions for an additional term of seven years, the invention to be in operation within three years from the date of the Patent, unless further time be allowed.”

“Under the Union Act, all Patents previously granted in each separate Province, prior to the Union, will, when Confederation is accomplished, be made to extend over the entire Dominion. An American citizen, or other foreigner, who may have secured his Patent in the Province of New Brunswick, prior to the new Patent Law coming into force, will, therefore, have it extended by this new Law, as vested rights derived from the Crown in any Province, cannot be interfered with, but must be extended over the whole, as was the case with Patents granted in the Provinces of Upper and Lower Canada, prior to their union in the year 1840.”

They are careful not to state the fact, that the Patents granted in Upper and Lower Canada before the Union, and so made to extend over the United Provinces, were only those granted to British Subjects.



" On the other hand, if the foreign inventor should delay his application until the General Law is in force over 'The Dominion,' its provisions may prevent the granting of Letters Patent to him, except he become a British Subject, and a resident also.

" We, therefore, advise you to make immediate application for Letters Patent in the Province of New Brunswick, for even should the new Patent Law, when it comes into force, give the foreigner the power of obtaining a Patent, the fees for the same will be considerably more than now demanded in New Brunswick. Many American citizens are now following our advice, and securing their Inventions in the manner we have indicated.

" If you have already taken out a Patent in the United States, or in any other Country, send us a copy of the drawings and specifications attached to the same—or if these have not been made, send us a full, written description, clearly explaining each part, and its mode of action, stating finally what you claim as your improvement or invention, and wish secured by the Letters Patent.

\* \* \* \* \*

" Forward, also, at the same time, with the written description, a draft, payable to our order, for fifty dollars. On the receipt of this a written Bond, signed by our firm, is returned to the Inventor, stating that he has placed the invention in our hands, with the view of obtaining *Her Majesty's Royal Letters Patent* for the same, in the Province of New Brunswick, and binding ourselves to prepare and prosecute the application in his behalf, with all due diligence and secrecy, and to obtain Letters Patent for the same in no other country, except at the instance of the Inventor, or his legal representative.

" The preparation of the papers, drawings, &c., for the application is then pushed on with all possible speed, and these when completed,

are forwarded with a letter of instructions to our Client for his examination and signature. This being accomplished, the papers are returned to us, with a draft for the balance of the fee, which will generally be about fifty dollars. In some cases, however, where numerous and elaborate drawings, with lengthy specifications, are required, involving much extra work, the final payment will exceed fifty dollars, but our charges will, in all cases, be moderate, in proportion to the amount of work performed, and made satisfactory to our Clients, with the view of obtaining additional business."

"On receipt of the papers, properly executed, the application will be immediately forwarded to the New Brunswick Patent Office. The facilities we possess at Fredericton, through our Branch Office in that city, will insure the granting of Letters Patent with the least possible delay, and, when the parchment is completed, will be at once forwarded to our Client.

"The total cost, including Government and Solicitors' fees, will range from \$100 to \$150 in gold."

"In Canada, where Patents are granted only to British Subjects resident in the Province, the Government fees are considerably less than those charged in New Brunswick, and, with Solicitors' fees, usually range from \$50 to \$100, according to the amount of labour involved. Term of Patent—Fourteen years, renewable for Seven years. The small model required is of a similar construction to that for New Brunswick. Send full particulars of invention, as before described, with a draft for \$30. \* \* \* \* \*

"The application is then lodged in the Patent Office at Ottawa City, and, from the facilities and influence we possess, the Patent is usually granted in two or three days after the receipt of the application."

. . . . .

" The speed with which we transact our business at the Patent Office is due to the correct and beautiful manner in which the various specifications and drawings are prepared; to our personal acquaintance with the different Government officials, and to the large number of Patents we are instrumental in obtaining, which gives us, so to speak, the right of way."

" We do not wish to draw invidious comparisons with other Solicitors, but, in justice to ourselves, state the simple fact that more Patents are obtained through our Agency than through that of all other Canadian Solicitors.

• • • • •  
• • • • •  
• • • • •  
• • • • •

" In Great Britain, and in other European countries, Patents are granted for Foreign inventions to those who first introduce them into those countries, irrespective of the original inventor, and in this manner many important and valuable inventions have been lost to the discoverer, from the delay in making his application; and frequently from placing the business in the hands of irresponsible or dishonest parties, styling themselves 'Patent Agents,' many of whom may be styled 'Patent Sharks,' seeking what they may seize and appropriate. Avoid all such, and employ none but responsible, well-known, skilful Solicitors, thoroughly posted up in the business, and who have a name to uphold."

I offer the following authorities as proof, that it has been the practice in the United States Patent Office to give Patents for inventions which had been in use and Patented in other countries:

" No person shall be debarred from receiving a Patent for any  
 " invention or discovery as provided in the Act approved on the 4th  
 " day of July 1836, to which this is additional by reason of the same  
 " having been patented in a foreign country more than six months prior  
 " to his application : Provided, that the same shall not have been intro-  
 " duced into public and common use in the United States, prior to the  
 " application for such Patent ; and Provided also, that in all cases every  
 " such Patent shall be limited to the term of fourteen years from the  
 " date or publication of such foreign Letters Patent."—U. S. Statutes  
 at large, Vol. 5., Page 193, Sec. 6.

" A Patent is not avoided by the mere fact that the invention or  
 " discovery patented, had been known or used in a foreign country,  
 " before the discovery of the Patentee."—See *Bartholomew vs. Winsor*,  
 16 Leg., Int, 316,

" In the case of Henry O'Reilly and others, Appellants, *vs.* S. F. B.  
 " Morse and others Respondents : the Appellants take three grounds  
 " of defence:—The 1st. They deny that Professor Morse was the first  
 " and original inventor of the electro-magnetic telegraph, described in  
 " his two re-issued Patents of 1848, and claim that the first fact of  
 " electro-magnetism was discovered by Oersted of Copenhagen, and also  
 " refer to the discoveries made by Barlow of the Royal Military  
 " Academy of Woolwich, England, and Dr. Stimhill of Munich in  
 " Germany, and Professor Wheatstone, of London, and other European  
 " Patentees.

" Taney, Chief Justice, in delivering the opinion of the Court, said  
 " 'In this view of the subject it is unnecessary to compare the  
 " telegraph of Morse, with these European inventions to ascertain  
 " whether they are substantially the same or not. *If they were the*  
 " *same in every particular it would not impair his rights.*'"

In November, 1867, the same parties issued a second pamphlet, which having been distributed amongst the members of



the Senate and Commons it will be only necessary to give a few extracts therefrom, which are the following :

Page 2. "The United States Patent Law is so framed, that as soon as we cease to discriminate against their Citizens in the granting of Patents in the Dominion of Canada their fee at once drops from \$500 to \$35 without additional legislation."

In answer to this, I will simply say, that such is not the case. The following is the United States Law on this point :

SEC. 10—"And be it further enacted, That before any application for a Patent shall be considered by the Commissioner, as aforesaid, the applicant shall pay into the Treasury of the United States, or Patent Office, or into any of the Deposit Banks, to the credit of the Treasury, if he be a citizen of the United States, or an alien, shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of \$30. If a *subject of Great Britain*, the sum of \$500, and all other persons the sum of \$300, for which payment duplicate receipts shall be taken out—one of which to be filed in the Office of the Treasurer."—United States Statutes at Large, 1836.

Why should the United States put a *difference* against any subject of Great Britain of Two Hundred Dollars more than against any other foreigner? Is this the reason that we should give them greater privileges, which were denied them even during the continuance of the Reciprocity Treaty?

Page 6—They further state: "If either of these courses be adopted, even should the new law prohibit foreigners obtaining Patents in the Dominion of Canada, the Patents already granted to aliens (especially American citizens) in New Brunswick and Newfoundland should be treated in like manner as those granted to the subjects of these Provinces."

*Why especially American Citizens ?*

Why not give equal privileges to the subjects of France and other European Countries ?

At Page 7 we read : " The Patents granted to American citizens " in New Brunswick and Newfoundland are limited in number, and " their extension over the Dominion, simultaneous with the other Patents, " would be but right and proper, if the two countries are to keep faith " with each other "!!!

As to "keeping faith," we have already seen how the Americans suit their own interests and convenience, both in the matter of legislation against our trade, and the far more serious affair of harbouring and pampering, in every city of their Union, hordes of banded scoundrels, secretly plotting, and openly proclaiming their determined purpose for the destruction of this Country ! The "faith" referred to by Messrs. Legge & Co. is not, however, between the two Countries, for that is not involved in the issue, but the *pledges* of the Agents to the "Patentees." It was under representations that these Patents would be extended—that many of them were applied for, and those who undertook to speak for Canada, without authority, now tremble, lest their promises should not be fulfilled, and, perhaps, their profits lessened !

The first of these pamphlets was not intended for the eyes of Canadians, but only for those of the Americans, amongst whom it was circulated, throughout the length and breadth of the Republic. And to instruct them (the Americans), were to evade and take advantage of our Patent Laws, by taking out Patents in New Brunswick, through their agency, and to induce them to do so, by the assurance that they (Legge & Co.) would have those Patents legalized over the whole Dominion.

The second pamphlet was distributed amongst the Members of both Houses, to serve as a guiding star in the framing of the new Patent Law, or in other words, to carry out Messrs. Legge & Co.'s grand scheme, which the reader will readily see, was *to make money*.

I have shown by extracts from pamphlet No. 1, and from the United States Statutes and decisions in the United States Courts, that it is the practice in England, France, and other European Countries, and also in the United States, to grant Patents for foreign inventions to the first applicant who introduces the same into those respective countries, irrespective of the original Inventor.

I consider that this should be sufficient to do away with any scruple that might be entertained as to the immorality of granting Patents to the first introducer of foreign inventions. The well-known origin and object of Patent Laws being for the special purpose of encouraging the people of a country to go abroad, acquire knowledge of useful arts, inventions, &c., and return home and put them in use. It might, with as much propriety, be said that a young man who goes to the United States as an apprentice to learn a trade, is guilty of stealing his master's brains, because he returns to Canada and makes a machine equal, if not superior, to that of his late employer.

Pamphlet No. 2 sets forth, that by having reciprocity with the United States in the matter of Patents, the advantages would be ten to one in our favor. Now, I must say, that the case would be directly the reverse. For whilst in Canada, during the year 1867, there were granted only about 300 Patents, there were, during the same year, over 20,000 granted in the United States.

A large portion of the people of the United States has made a business of getting out Patents. You will seldom meet one of them who has not two or three Patent Rights in his pocket; and if reciprocity were granted them, they would flood the Dominion with their Patents in less than three months. As to our taking out Patents in the United

States, I may say that it would be like sending coal to Newcastle, as they have now ten Patents for every one in use. Also, there are but few inventions patented here which have not been patented in the United States, and the great majority of them before they were so patented here.

It has been admitted by all who have written for and against Reciprocity that, owing to our present Patent Laws, many of our young men annually leave the country, and become citizens of the United States. As a remedy for this, I would suggest that our present Law be so amended as to allow us the same privileges in respect to discoveries in the United States as we enjoy in other foreign countries. All that is necessary to effect this is to strike out of sub-section 2, of section 10 of our existing Patent Laws, the words, "the United States of America," thus placing the United States on the same footing with all other foreign countries.

By thus making our Patent Laws exclusively for the benefit of our own people, it would not only induce many of our young men to return home and put what they have learned abroad into use here, for their own and their country's benefit, but would also save the country large sums of money which, in the event of Reciprocity, would go into the pockets of Americans from the sale of Patents and Royalties.

Yours most respectfully,

JOHN M<sup>C</sup>BEAN.



